

MANEOTIS SHEEP CO.,  
RESOURCE PROPERTIES, INC.

IBLA 82-75

Decided March 22, 1983

Appeal from decision of Colorado State Office, Bureau of Land Management, dismissing protest of approval of assignment of coal lease. D-051376.

Affirmed.

1. Coal Leases and Permits: Generally

Where an assignment of a coal lease has been approved by BLM without notice of a controversy regarding an alleged prior assignment to a third party and BLM subsequently receives a protest from the third party, a decision dismissing the protest and declining to disturb existing conditions will be affirmed in the absence of evidence of resolution of the dispute between the parties through agreement or litigation.

APPEARANCES: Armando C. de Baca, Esq., Denver, Colorado, for appellants; William R. Marsh, Esq., Denver, Colorado, for AMCA Coal Leasing, Inc.

OPINION BY ADMINISTRATIVE JUDGE GRANT

The Maneotis Sheep Company (Maneotis) and Resource Properties, Inc. (Resource), have appealed from a decision of the Colorado State Office, Bureau of Land Management (BLM), dated September 22, 1981, dismissing their protest of the approval of the assignment of coal lease D-051376 from Maneotis to AMCA Coal Leasing, Inc. (AMCA). 1/

---

1/ In its answer to appellants' statement of reasons, counsel for AMCA argues that Maneotis should be deleted as an appellant based on his "information and belief" that Maneotis did not authorize the appeal. The appeal was actually filed by appellants' attorney of record at the time, E. Ricardo Gonzales, Esq., on their behalf. However, we note that the protest is purportedly signed by representatives for both appellants. In the absence of any indication by Maneotis to the Board that it did not intend to appeal, we decline to strike them as a party.

Coal lease D-051376 was originally issued to Marion Posig on October 8, 1940, for land situated in secs. 12 and 13, T. 3 N., R. 86 W., sixth principal meridian, Routt County, Colorado, pursuant to the Mineral Leasing Act of 1920, as amended, 30 U.S.C. §§ 181-287 (1976). The lease was transferred by several mesne conveyances to Maneotis. On September 20, 1977, AMCA filed with BLM an assignment from Maneotis to AMCA of coal lease D-051376, dated August 30, 1977, and a request for approval of the assignment. By decision dated May 2, 1978, BLM approved the assignment, effective June 1, 1978.

By letter dated October 4, 1980, appellants protested approval of the assignment from Maneotis to AMCA. Appellants stated that the basis for the protest was that "at the time of approval, the lease had already been assigned by Maneotis Sheep Company to Resource Properties, Inc." Appellants submitted a copy of an agreement between Maneotis and Resource, dated January 20, 1977. In its September 1981 decision, BLM dismissed appellants' protest because, at the time of approval of the assignment to AMCA, BLM had no evidence of an assignment to Resource. The decision noted that the agreement between Maneotis and Resource was not filed with BLM until November 24, 1980, long after the 30 days from date of execution allowed by 43 CFR 3506.3-1, and was not accompanied by "a filing fee, request for approval or statement of qualifications." BLM concluded that the assignment to AMCA was "properly approved."

In their statement of reasons for appeal, appellants contend that the agreement between them was "properly filed" and that the assignment to AMCA was "ineffective" in view of the earlier assignment to Resource.

In its answer to appellants' statement of reasons, AMCA argues that BLM's dismissal of appellants' protest should be sustained for the simple reason that appellants never submitted an actual assignment of coal lease D-051376 from Maneotis to Resource. The executory agreement submitted with the protest merely provided that: "Resource shall pay to Maneotis such sums as hereinafter provided to keep and maintain this agreement in force. Upon receipt of the first payment (\$125,000.00 payment into escrow a copy hereto attached) Maneotis shall assign to Resource the Federal Lease known and denominated as D-051376." AMCA is correct in its statement that there is no evidence that the lease was actually assigned to Resource; however, we believe that this case is governed by a long-standing Departmental policy, regardless of whether the lease was so assigned.

[1] Section 30 of the Mineral Leasing Act, as amended, 30 U.S.C. § 187 (Supp. II 1978), provides that "[n]o lease issued under the authority of this chapter shall be assigned \* \* \* except with the consent of the Secretary of the Interior." The applicable regulation, 43 CFR 3506.3-1, further provides that assignments "must be filed for approval within 30 days from final execution." Where approval of an assignment is not obtained, the assignment is not effective as against the United States. If an assignment was actually executed between Maneotis and Resource, Resource may have certain rights vis-a-vis the other parties in interest under State law. However, the Department has long held, in the case of oil and gas leases, that where an assignment has been approved by BLM without notice of a controversy between private parties as to the effectiveness or validity of the assignment, and BLM subsequently receives notice, it will decline to disturb existing conditions without evidence of agreement of the parties or a court decree on the matter in

controversy. Petrol Resources Corp., 65 IBLA 104 (1982); William B. Brice, 53 IBLA 174, aff'd, Brice v. Watt, No. C-81-0155 (D. Wyo. Dec. 4, 1981), and cases cited therein. We believe that this principle is equally applicable in the case of coal leases. In the present case, the assignment from Maneotis to AMCA was properly approved, with no apparent notice of any controversy regarding an alleged prior assignment of the lease to Resource. The protest was filed over 2 years later. Accordingly, it was proper for BLM to dismiss appellants' protest. This preserves the status quo until such time as appellants and AMCA have reached mutual agreement as to the validity of the respective assignments or the validity of the assignments has been litigated between the parties in interest and the results certified to BLM. 2/

AMCA also contends that it is a bona fide purchaser of the lease by assignment from Maneotis. A bona fide purchaser of a coal lease is afforded statutory protection against cancellation of the lease. 30 U.S.C. § 184(h)(2) (1976). Since the issue in this case is not cancellation of the lease but, rather, the propriety of the BLM decision dismissing appellants' protest of approval of the assignment to AMCA, the bona fide purchaser issue is not properly before the Board.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

C. Randall Grant, Jr.  
Administrative Judge

We concur:

James L. Burski  
Administrative Judge

Anne Poindexter Lewis  
Administrative Judge

---

2/ Counsel for AMCA has represented that Resource filed suit against AMCA in Federal and state court and that both suits have been dismissed. Copies of orders of dismissal entered in cases in both courts captioned in the names of Maneotis Sheep Company, Plaintiff v. AMCA Coal Leasing, Inc., Defendant, have been filed with the Board.

